

THE INFLUENCE OF THE EUROPEAN UNION ACCESSION PROCESS ON THE PROTECTION OF MINORITY RIGHTS IN BALKAN COUNTRIES

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Abstract

According to the Copenhagen political criteria, any candidate who want to be a member of the European Union must achieve the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The European Union accession process contributed to the protection of human rights and minority rights in some of the Balkan countries which had entered to the European Union especially in the latest round of enlargement such as Bulgaria and Romania. These important/positive examples of the past enlargement process should also be taken into consideration by the other candidate and potential candidate Balkan countries who want to accede to the EU.

Keywords: Minorities, Balkan countries, Accesssion to the EU

Introduction

Since the post-Cold War period, the protection of minorities started to become a more important issue on the European Union agenda with the beginning of the accession process of the former communistes countries to the EU. The ethnic problems/conflicts realized in the former Republic of Yougoslavia also showed clearly the importance of minority issue not only primarily in the context of the protection human rights but also securing the stability of the whole region. Apart from Greece which joined to the EU in the second enlargement in 1981, the other three Balkan countries became members of the EU in the fifth enlargement which symbolized the reunifacition of Europe. Slovenia acceded to the EU with other nine European countries in 2004 and Bulgaria and Romania became members in 2007 as part of this same historical wave of EU enlargement.

Apart from the EU member Balkan countries, many of the other Balkan countries are either official candidates or potential candidates to the EU. Turkey, Serbia, The former Yugoslav Republic of Macedonia and Montenegro are currently candidate countries while the other countries of the Western Balkans such as Albania, Bosnia Herzegovina and Kosovo are the potential candidates which means that they have

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the prospect of EU membership. And Croatia which is currently an acceding country will become a member of the EU on 1 July 2013.

Concerning the EU's approach on the protection of minorities, it's possible to say that the Council of Europe's approach concerning the protection of minorities also reflect the EU's approach on this issue. The standards laid out in the fundamental documents on the protection of minorities such as the Framework Convention on the Protection of National Minorities, the European Charter for Regional or Minority Languages adopted by the Council of Europe are also the same standards accepted by the EU. (Çavuşoğlu, p.96; Bilener, p.177)

Among these documents adopted by the Council of Europe, the Framework Convention on the Protection of National Minorities is especially important because it's the main reference document of the EU on the protection of minorities as it can be definitely seen in EU's regular reports concerning the progress of the candidate countries towards accession. In this paper, firstly we will briefly present the influence of the EU accession process on the protection of minority rights in two Balkan countries such as Bulgaria and Romania since they are the two important examples of the past enlargement process. And then try to draw some conclusions and recommendations from their experience for the other Balkan countries which are candidate or potential candidate to the EU.

The Influence of the EU Accession Process on Minority Rights in Bulgaria and Romania

After the collapse of the communist regimes, Bulgaria and Romania have started to make important/significant changes on their policy on minorities which were clearly contrary to the international human rights law. And this change on their minority policy has especially gained a new momentum in the 2000's because of their intention to accede to the European Union.

During the Communist regime the Bulgarian government had adopted an assimilation policy which denied the existence of the main minorities of the country. As an example, the names of the Bulgarian Turks and Roma were changed by force with the intention to target their identity. With the fall of the communist regime in 1989, this policy was abandoned and Bulgaria has started to evaluate the minority issue from a different perspective. In that context it's important to note that a compromising formula which would recognise the principles covered by the Framework Convention on the Protection of National Minorities on the basis of individual human rights without referring to the concept of "minority" was developed in the new Constitution of Bulgaria of 1991 as article 36 of the Constitution provides that citizens whose mother tongue is not Bulgarian shall have the right to study and use their own language alongside the compulsory study of the Bulgarian language. (Çavuşoğlu, p.97)

In the second half of the 1980's, the European Economic Community started to negotiate for agreements on trade and cooperation with a number of Eastern European countries including Bulgaria and the respect of human rights and minority rights were developed as a pre-condition for these negotiations. (Pentassuglia, p.9). Negotiations for a Trade and Cooperation Agreement with Bulgaria which started in April 1989, were suspended because of the European Economic Community's concerns about violations of the linguistic and religious rights of Turkish minority and were resumed only after the realization of domestic reforms which met the EEC's demands in December 1989. (Pentassuglia, p.10)

Bulgaria signed the Trade and Cooperation Agreement with the EU in 1991 and a far-reaching Association Agreement called "Europe Agreement" in 1993. As it was stated by the European Commission, The Europe agreement which created a free trade zone between Bulgaria and the Member States was already part of the strategy of the EU to prepare Bulgaria for accession to the EU, which also included substantial financial and technical assistance. (Regular Report 2005, p.3). Bulgaria submitted its application for membership to the EU on 14 December 1995. Accession negotiations opened in 2000 were closed in December 2004. The Treaty of Accession was signed in April 2005 and Bulgaria became a member of the EU on 1 January 2007.

Bulgaria signed the Framework Convention on the Protection of National Minorities on 9 October 1997 and ratified it on 7 May 1999. The convention entered into force in Bulgaria on 1 September 1999. As Sasse avances, the timing of the ratification of the Framework Convention must have been influenced by the prospect of EU accession since the EU decided to open negotiations with Bulgaria in December 1999 (Sasse, p.23). In its declaration made upon the ratification of the framework Convention for the Protection of National Minorities, the Government of Bulgaria not only made reference to the values of the Council of Europe but also to its desire for the integration into the "European structures". The EU Commission also frequently made reference to the status of ratification of this document by Bulgaria under the section concerning the minorities and the protection of minority rights of its regular reports on Bulgaria's progress towards accession. In its regular report of 4 November 1998, the EU Commission mentioned that although Bulgaria had signed the convention, it had't ratified it yet. And in its regular report of 13 October 1999, it specificaly mentioned that the framework convention was ratified by the Bulgaria.

With the aim of joining to the EU, Bulgaria made progress in bringing its legislation into line with European standards and took some concrete steps in order to improve the situation of minorities. In 1994, The Bulgaria adopted the Decree No.183 of the Council of Ministers for Studying the Mother Tongue in Municipal Schools, according to which the pupils whose mother tongue is not Bulgarian can receive instruction in their mother tounge for four hours a week from the first to the eight grades in municipal schools as a facultative subject. And it was provided in the

same decree that “the finances for mother tongue instruction” are supplied by the municipal budgets.

Under article 8 of the Rules and regulations for the application of the National Education Act of 1999, students for whom Bulgarian is not the mother tongue can study their mother tongue in the municipal schools according to the state educational standards for the respective educational level, general educational minimum and the educational plan. (State Gazette, No.68/1999). The Law on the Educational Degree, Educational Minimum and the Educational Plan which was adopted in 1999 repealed the provision of the Decree No. 183 which provided the mother tongue education as a facultative subject. Under article 15 of the Law, studying of the mother tongue was included in the obligatory elective/selectable education. (State Gazette, No.67, 27 July 1999)

With the adoption of The Ordinance No. 4 of the Ministry of Education on the Educational Minimum and the Educational Plan in 1999, the study periods for the obligatory elective subjects are distributed among the subjects from the cultural-educational field and mother tongue and for each of these subjects, up to 72 school periods annually are decided to be given for the 9 - 10 grade, and up to 108 school periods annually for the 11 -12 grade.

A news programme in Turkish was introduced on Bulgarian national public television in 2000 and besides the news programme, the national television started to broadcast two other programmes addressing minority issues and produced by minorities’ representatives. (European Commission, 2001 Regular Report on Bulgaria's Progress towards Accession, p.25)

Bulgaria adopted a decree, establishing a National Council for Ethnic and Demographic Affairs (NCEDA) composed of representatives of the government as well as various minority groups whose main task was to develop and put forward strategies on demographic policy and to promote tolerance and understanding between various ethnic and minority groups in 1997. A framework programme for the integration of Roma into Bulgarian society which laid out core principles and general measures to fight discrimination and unemployment, increase levels of education and health care, improve housing conditions, and to ensure cultural protection and access to national media, was adopted in 1999. On the basis of the framework programme, Roma representatives were appointed in most of the regional centres of Bulgaria as experts on ethnic and demographic issues and Roma advisors were also appointed to a number of ministries. (European Commission, 1999 Regular Report from the Commission on Bulgaria’s Progress towards Accession, pp.15-16; 2000 Regular Report from the Commission on Bulgaria’s Progress towards Accession, pp. 21-22). The Minister of Education and Science created a Consultative Council on Education of Children and School children from the Minority Groups which is tasked with the preparation and implementation of a national education strategy for the integration of children from the minority groups in 2002.

In addition, Bulgaria took steps to bring into line its national law with the two EU directives adopted in 2000, the Racial Equality Directive and the Employment Equality Directive which requires member States to establish a legal framework to prohibit discrimination and put into effect the principle of equal-treatment. It adopted the Protection against Discrimination Act in 2003 which covered all grounds in two directives and additional grounds including sex. (European Commission, Equality and non discrimination annual report 2005, April 2005, p.16). It also established a Commission for protection against discrimination as an independent body which is tasked with all grounds specified in two directives plus sex and other grounds. (European Commission, Equality and non discrimination annual report 2006, September 2006, p.27.)

However, as it was stated in the EU Commission's Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania of 2006, certain concerns persist regarding the integration of Roma children to schools of higher education, the access of the Roma to healthcare services and the administrative capacity of the National Council for Cooperation on Ethnic and Demographic Issues on the regional level. And further efforts are needed to combat all forms of intolerance aiming to combat any form of racism, discrimination or xenophobia. (European Commission, Communication from the Commission Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, 26 September 2006, pp.21-22). Additionally, it's important to point out that the EU Charter for Regional and Minority Languages hasn't been signed by Bulgaria until now.

Despite this concerns, as a result of the considerable progress made to complete its preparations for the EU membership, the EU declared that Bulgaria was sufficiently prepared to meet the political criteria. (European Commission, Communication from the Commission Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, 26 September 2006, p.12)

Likewise Bulgaria, Romania established diplomatic relations with the EU in 1990 after the emergence of a democratic regime. It signed a Trade and Co-operation Agreement in 1990 and the Europe Agreement in 1993. In the preamble of the Europe Agreement, it is clearly pointed out the "need to continue and complete, with the assistance of the Community, Romania's transition towards a new political and economic system which respects the rule of law and human rights, including the rights of persons belonging to minorities (Constantin, op.cit., p.3)

It submitted its application for membership to the EU on 22 June 1995 and its accession negotiations opened in 2000, were closed in 2004. The Accession Treaty was signed in April 2005 and Romania became a member of the EU on 1 January 2007 together with Bulgaria. Romania signed the Framework Convention on the Protection of National Minorities on 1 February 1995 and ratified it on 11 May 1995. And the convention entered into force in Romania on 1 February 1998. In

addition Romania signed the European Charter for Regional and Minority Languages on 17 July 1995 and ratified it on 29 January 2008 and the Charter entered into force on 1 May 2008.

As it was declared in its third report on the implementation of the Framework Convention for the Protection of National Minorities, in two decades of democratic evolutions, during which it became a member of the Council of Europe and the European Union, Romania has developed its system of protection of national minorities (Council of Europe, Third report submitted by Romania pursuant to article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/III (2011)002,16 May 2011, p.5). It made significant progress on the protection of minorities, especially during the pre-accession period in order to become a member to the EU. These positive developments regarding the protection of minority rights are primarily crystallized as legislative and constitutional amendments.

The amendments made to the Education Law No 84/1995 were approved by the Romanian Parliament in 1999. According to the articles 118 and 121 of the Education Law, persons belonging to national minorities have the right to study and receive instruction in their mother tongue, at all levels and forms of education with appropriate request and the pupils belonging to national minorities that attend schools with tuition in Romanian shall be granted, at request and according to the law, the study of the language and the literature of the mother tongue as well as the history and traditions of the respective national minority, as school subjects. The law also provides that persons belonging to national minorities shall have the right to set up and manage their own private higher educational institutions. (Law on Education, No.84/1995)

In 2001, Romania adopted the Law on Local Public Administration according to which the official use of minority languages in dealings with local authorities in administrative territorial units where the inhabitants belonging to national minorities represent more than 20% of the population was authorised. In their relations with the authorities and staff of the local public administration, citizens belonging to national minorities may communicate orally or in writing, in their mother tongue and they shall be answered both in Romanian and in the mother tongue. In these territorial administrative units, persons who know the mother tongue of the citizens belonging to the respective minority shall be employed for duties involving public relations and the normative decisions shall be brought to the notice of citizens in the language of those minorities. (Law No. 215 on Local Public Administration, 23 April 2001, Official Gazette of Romania, No. 204, 23 April 2001)

In addition, the article 79 of the Law No. 360/2002 regarding the status of police servants adopted in 2002 provides that in the administrative-territorial units in which persons belonging to a national minority represent more then 20% of the total population, police officers that know the respective language will be hired. (Law no.360/2002 regarding the status of the police servants)

Besides the legislation extending the official use of minority languages, The Constitution of Romania of 1991 was amended and completed by the Law No. 429/2003 on the revision of the Constitution of Romania in 2003. This law which was approved by the national referendum aimed to bring the Romanian law into line with EU acquis as part of the process for EU accession. The article 148 of the Constitution which is under the new title devoted to Romania's Euro-Atlantic integration specially deals with Romania's the integration to the EU.

Concerning the minority rights, the new second paragraph of article 120 called "local public administration" enshrined the right of national minorities which have a significant weight in the territorial-administrative units to use their national minority language in the relations with the local public administration authorities and the decentralized public services. The article 128 called "use of mother tongue and interpreter in the court" also introduced the right for national minorities to express themselves in their mother tongue before the courts of law.

In addition during the pre-accession period Romania established an Inter-Ministerial Committee for National Minorities and adopted a National Strategy for Improving the Condition of Roma. Although this is a positive development, as it is stated in the monitoring report of the EU Commission, the institutional framework for the implementation of national strategy for Roma is not sufficiently effective and should be improved. (Commission of the European Communities, Communication from the Commission Monitoring report on the state of preparedness of EU membership of Bulgaria and Romania, COM2006 (549) final, 26/09/2006, p.40)

General Recommendations for the Candidate or Potential Candidate Balkan Countries

With the aim of joining to the EU, Bulgaria and Romania realized substantive changes on their national policy concerning the protection of minority rights. Despite some of the problems that should be overcome, as it's declared in the EU's regular reports, these two Balkan countries made far reaching efforts to adapt their legislation and administration to the laws and rules of the EU. (Commission of the European Communities, Communication from the Commission Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, 26 September 2006, p.13) Concerning the protection of minority rights, as a consequence of their efforts, important legislative and constitutional amendments which may be called as "reforms" were realized and though not perfect, some national institutions for improving the conditions of minorities were set up.

The accession of these two Balkan countries to the EU also demonstrated to the other Balkan countries which are either official or potential candidates to the EU that their ultimate goal is achievable. And therefore the efforts made during the pre-accession period of these two examples of the latest enlargement wave, should also

be taken into consideration by the other Balkan countries who want to accede to the EU.

In this context, ratification of international conventions on the protection of minority rights; bringing into line the national law with the European standards and establishing national institutions for improving the conditions of minorities should be the prioritised/main issues that should be evaluated and reviewed by these Balkan countries.

Among the international minority rights conventions, the ratification of the Framework Convention on the Protection of National Minorities is especially important because although it's a convention adopted by the Council of Europe, it's also the main reference document of the EU on the protection of minority rights as it is clearly observed in the Commission's regular reports. Besides this convention, the EU Commission also refers to another Council of Europe convention, the European Charter for Regional or Minority Languages in its regular reports. As it was seen clearly in these reports, the standards of the Council of Europe on minority rights are also accepted by the EU. (Çavuşoğlu, Ekim 2000-Mart 2001, p.96)

The Framework Convention on the Protection of National Minorities is in force in all of the Balkan countries which are candidate and potential candidate to the EU except for Turkey. Concerning The European Charter for Regional or Minority Languages, it is in force in Croatia, Serbia, Bosnia and Herzegovina and Montenegro. It hasn't been signed by Albania and Turkey yet. And although it was signed by The Former Yugoslav Republic of Macedonia, it hasn't been ratified until now.

To adapt constitutional and national framework to meet international standards on minority rights should be one of the priorities of the Balkan countries which are candidate or potential candidate to the EU. As it is declared in European Parliament's report, some progress has been achieved on this issue especially in Western Balkan Countries but much more should be done concerning the involvement of minorities in the decision-making processes and public administration as well as their socio-economic integration. (European Parliament, Directorate General for External Policies Policy Department, Briefing Note, Reconciliation and Human Rights Protection in Western Balkans, November 2009, p.13)

As an example, under the chapter on minority rights of the new Constitution of Montenegro adopted in 2007, besides the other provisions concerning the minority rights, the right of minorities to use their own language and alphabet in private, public and official use; the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority national communities are included. Since these constitutional guarantees should be followed by further legislative harmonisation and the adoption of legal acts, the Law on

General Education of 2003 and the Law on Minorities Rights and Freedoms of 2006 were amended to harmonise them with the new Constitution. (European Commission, Montenegro 2011 progress report, SEC(2011) 1204 final, 12 October 2011, p.20; Council of Europe, Parliamentary Assembly, The honouring of obligations and commitments by Montenegro, Doc.12952, 8 June 2012, p.26)

Likewise under the section on the rights of persons belonging to national minorities of the Constitution of the Republic of Serbia which was adopted in 2006, the right to education in minority languages is guaranteed. In addition to these constitutional guarantees, it's also referred to in other legislation such as the Law on National Minorities, the Law on Elementary Education etc. As it is stated by the Advisory Committee of The Framework Convention, the adoption of the Law on Prohibition of Discrimination and the Law on National Councils of National Minorities in 2009 was also considered as positive developments by the Committee of Ministers of the Council of Europe. (Council of Europe, The Committee of Ministers, Resolution CM/ResCMN(2011)7 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia, 30 March 2011).

As a consequence of these positive developments, European Commission also declared that the legal and policy framework for human rights and protection of minorities in Serbia is overall in line with European standards. (European Commission, Communication from the Commission to the European Parliament and The Council Commission Opinion on Serbia's application for membership of the European Union, COM(2011) 668 final, 12 October 2011, p.8). Concerning the national institutions on minorities, it should be generally mentioned that although the establishment of such institutions is very important for the protection of minority rights on the national level, without political and financial support, their influence remains limited. Because of that, the candidate or potential candidate Balkan countries should not only focus on establishing these institutions but also provide them with political and financial support in order to increase their efficiency.

Conclusion

According to the Copenhagen political criteria, any candidate who want to be a member of the European Union must achieve the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The European Union accession process contributed to the protection of minorities in Balkan countries such as Bulgaria and Romania which entered to the EU as part of the fifth enlargement in 2007. As a consequence of the internalization and the europeanization process, these two countries made significant progress on the protection of minority rights.

The efforts made by these Balkan countries with the aim of joining to the EU during the pre-accession period which may be called as reforms, should also be taken into consideration by the other candidate and potential candidate Balkan countries who

want to accede to the EU. Within this context, they should primarily focus on the ratification of the international conventions on the protection of minority rights; bringing into line their national law with the European standards and establishing and supporting their national institutions for improving the conditions of minorities.

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